

CL5-2011-0038

Leslie D. Rosenstein  
6619 Argentia Rd.  
Austin, TX 78757

March 31, 2011

Board of Adjustment  
City of Austin  
P.O. Box 1088  
Austin, TX 78767

Re: Standing as Interested Party for Appeal of Interpretation Dated March 12, 2011

Dear Chair and Members of the Board of Adjustment,

I meet the requirements of 25-1-131 as an Interested Party:

- The administrative decision of March 12, 2011 by Director Guernsey was addressed to me.
- I have communicated an interest in this matter by filing repeated complaints about 6621 Argentia to the City, and by my letters of December 15, 2010 and February 4, 2011 to City Manager Ott and Mayor Leffingwell regarding this issue.

My phone number is 512-970-8433.

Respectfully,



Leslie D. Rosenstein, Ph.D.

C15-2011-0038  
ROW. 10574556  
TP-02350 1034  
0235010362

CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
INTERPRETATIONS  
PART I: APPLICANT'S STATEMENT  
(Please type)

STREET ADDRESS: 6619 and 6621 Argentinia Road

LEGAL DESCRIPTION: Subdivision –

Allandale Terrace Sec 2

Lot (s) 30 and 31 Block D Outlot N/A Division N/A

ZONING DISTRICT: SF-2

I/WE Leslie D. Rosenstein on behalf of myself/ourselves as  
authorized

Agent for self affirm that on the 31st

Day of March, 2011, hereby apply for an interpretation hearing before the Board of  
Adjustment.

Planning and Development Review Department interpretation is:

Pursuant to City Code 25-2-2 parts (A) and (B) (see Attachment A: City Codes), Director Greg Guernsey of the Planning and Development Review Department, made use classification determinations that affect **every single-family residence in Austin**. This interpretation appeal falls under part (C) of that section.

In his letter of March 12, 2011 (see Attachment B: Guernsey Interpretation Letter), the Director states: "[1] A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. [2] **While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations**, can make the minor conflicts often experienced by all neighbors more difficult to resolve."

Further clarification of these two determinations was requested (see Attachment C: Email to Ms. Kathleen Buchanan):

[1] Transient rentals in residential zoning are not hotel/motel use.

[2] **Transient rentals in residential zoning are classified as single family residential uses in code.**

While the first determination, concerning hotel/motel use contradicts the plain meaning of City Code 25-2-4 (B) (35): "hotel-motel use is the use of a site for the provision of rooms for temporary lodging," this specific determination is not appealed in this application. **This interpretation appeal only addresses the second determination, that "the frequent**

**rental of a single family home for short durations" is classified as a single-family residential use.** As described below, this interpretation is "contrary to applicable law or regulations" (City Code 25-1-190).

I feel the correct interpretation is: \_\_\_\_\_

**The transient rental (30 days or less) of a single-family home in residential zoning is not an allowed residential use** as found in City Code 25-2-3 (A) and (B). (See Attachment A: City Codes.)

Note: As used in this interpretation appeal, "transient rental" is also known as short-term rental (STR), and vacation rental.

I respectfully request that the granting of this appeal include a grace period of two months to allow residential property owners or their agents time to convert from transient rentals to nontransient rentals (rentals greater than 30 days in length).

**NOTE:** The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

**Special Note and Objection from Applicant:**

The Interpretation Appeal form as supplied by staff does not precisely fit the nature of this appeal. A formal protest and request for a suitable form was made to Director Guernsey and he stated that I should: "proceed to use the existing form to the best of your ability" (see Attachment D: Email from Greg Guernsey).

Article 1 part (B) of The Rules of Procedure for the BOA (see Attachment E: BOA Rules), states: "All appeals shall be filed on an application form provided by the staff liaison and shall be complete in all respects before being accepted for filing." Article 2 part (D) states: "The Board may grant an appeal if it makes all of the following findings." Again, some of these findings are worded in such a way that do not quite fit this particular appeal (for example, item 2 refers to "permitting" rather than "denying" a use, and item 3 refers to "not granting" rather than "granting" a special privilege).

Every effort was made to complete this form; reasonable modifications were required to better serve the intent of BOA Rules and City Code in making this appeal. I ask the Board to apply revised findings, as shown herein, that are better suited to the logic of this particular case when considering this appeal.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: \_\_\_\_\_

The Director has ruled that the transient rental (30 days or less) of a single-family home is an allowed residential use under existing City Land Use Code. This interpretation is contrary to both the intent and purpose of residential zoning as defined in Code (25-2-3 and 25-2-51). In fact, it is my opinion that this is out of character with residential neighborhoods, and a new use that grants a special privilege to operators of transient rental properties in residential neighborhoods.

*Nontransient* rental (greater than 30 days) of a single-family home is not at issue here. Non-owner-occupied *nontransient* rentals have always been an allowed residential use under Code. But Code is clear that the duration (and frequency) of a lease matters: nontransient rentals are greater than 30 days in duration and constitute an allowed residential use by definition. On the other hand, transient rentals, for 30 days or less, are not an allowed residential use unless they are a defined and regulated Bed and Breakfast Group 1 or a Group Home (Class 1) (City Code 25-2-3).

Structures in residential zoning are built, by definition, to residential building codes. This, however, does not necessarily make transient rentals in these structures allowable under code. In fact, Texas building codes clearly define a "residential" structure as a dwelling "that does not have the character of a facility used for the accommodation of transient guests" (see Texas 214.211(3) in the following *Definitions* section).

While City Code 25-2-2 states that the director of PDRD "shall determine the appropriate use classification for an existing or proposed use or activity", it also states that he or she, "**shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses**". While transient rental use in residential zoning is similar to a B&B, The Director has not noted this similarity, nor has he argued that they should be regulated by the B&B codes. He has, instead, created a new class of transient use in residential zoning, with no regulations

Most importantly, **a residence or dwelling is where someone lives**. People who rent transient accommodations in residential zoning do not live in them; rather, they live elsewhere, they vote elsewhere, and they displace residents who could participate in the neighborhood community in any of the variety of ways residents contribute. This is what residential zoning is all about: it is for the protection and benefit of Austin residents.

### **Intent of Code**

City Code 25-2-1 describes and classifies the five "major use categories" in the "zoning jurisdiction" as **residential, commercial, industrial, civic, and agricultural**. These five uses are further defined in Chapter 25-2.

The intent of the residential zoning Code is clear: transient rentals (except for Bed & Breakfasts and Group Homes) are excluded from family-oriented neighborhoods. City Code 25-2-3 (A) clearly describes residential uses to "include the occupancy of **living accommodations on a nontransient basis**". Part (B) describes the allowed residential uses, and only Bed and Breakfast Residential and Group Residential provide for transient uses (both of which are strictly regulated in City Codes 25-2-6, 25-2-781, 25-2-841, and 25-12-213). In SF-2 zoning, which is the zoning classification of 6621 Argentinia Rd., Bed and Breakfast Group 1 is actually the only nontransient use permitted. Therefore, in residential zoning, people are allowed to **sleep** where they **live** on a **permanent** basis, or stay

temporarily only if the owner or owner's agent is present, which is in direct opposition to Director Guernsey's interpretation.

If the Director's interpretation were correct, then transient rentals of single-family homes would constitute a new class of unregulated public accommodations in our neighborhoods. Consider that a steady stream of strangers is staying next door to residential property owners or long-term tenants without any supervision or continuity. This is a distortion of the intent of Code.

City Council has traditionally been protective of the neighborhoods' residential character. This is illustrated by the ordinances concerning operation of Bed & Breakfasts (Group 1): Individuals can only own one; they must live on the premises; they must obtain a license; the property must be more than 1000 feet from the next Bed & Breakfast, and the address cannot be advertised. In opposition, transient rentals in residential zoning in Austin are unlicensed and unregulated, and investors often own more than one with no regard for proximity to other transient rentals or Bed & Breakfasts. Given their current rate of growth, the hundreds of transient rentals in Austin neighborhoods today may turn into thousands tomorrow due to the efficiency of Internet marketing. Compare that to the total of 10 Bed & Breakfasts in Austin today (according to Charles Boas in Code Compliance).

### Definitions

In arguing for his use classification determination, the Director may claim that City Code is not clear in its definition of certain terms. In any statutory interpretation, the plain meaning of ordinary English words in their ordinary senses is assumed (see 1992 Code Section 1-1-3; Ord. 031106-11; Ord. 031211-11). Therefore, words like "transient", "nontransient", "temporary", and "residential" are clear as per definitions from *Webster's* and related sources:

Living accommodations—*where one lives*

Nontransient—*not transient, permanent*

Reside—*to dwell permanently or continuously*

Residence—*the act or fact of dwelling in a place for some time*

Residential—*used as a residence or by residents*

Temporary—*lasting for a limited time, transient*

Transient—*passing through or by a place with only a brief stay or sojourn*

A clear definition of "residential" also appears in the Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. In 214.211 (3) we find that:

"Residential" means having the character of a detached one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that **does not have the character of a facility used for the accommodation of transient guests** or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

This state statute covers the building of residential zoned structures with the clear expectation that those structures will be used for nontransient purposes. In other words, when a residential building permit is issued, the resulting use is intended to be nontransient.

For further clarification of the word "transient", City Code 25-12-1 (A) states that "the 2009 International Building Code published by the International Code Council is adopted and incorporated into this section" of City Code. Section 310.2 of the 2009 International Building Code defines "transient" as the **"occupancy of a dwelling unit or sleeping unit for not more than 30 days"**.

Transient rentals in residential zoning provide most of the same amenities as a hotel: furnished accommodations, clean linens, and cleaning services in preparation for the next "guest". Members of the transient rental industry even make constant reference on the Internet to their "industry", their "business", their "guests" similar to hotels in their bookings, marketing, and rentals. If transient rentals in residential zoning are for the same duration and conditions as lodging in a hotel ("temporary" and "transient"), then they too constitute the same "transient" use as a hotel room, which most people understand to be for "short duration".

Both the City and the State have recognized transient rentals as a special, taxable, commercial use of property by their Hotel Occupancy Tax (HOT) provisions. City Code 11-2-1 (3) states that a "hotel means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or *other building where a room is furnished for a consideration*". Chapter 11-2 also states that HOT must be collected and remitted for any hotel room occupied for less than 30 days. This chapter clearly includes transient rentals in residential zoning. Similar state law applies (see Texas Tax Code, Chapter 156) City's current collection of HOT from at least 50 transient rentals in residential zoning in Austin, in addition to collections from Bed & Breakfasts serves as prima facie evidence of their "transient" use in residential zoning.

### **Purpose of Code**

City Code 25-2-51 clearly describes the purposes of residential zoning districts, including: to **"reserve areas for residential occupancy"** in a "variety of housing types consistent" with the **"standards of public health, safety, and welfare"**, and to **"ensure adequate privacy"** for each dwelling". Transient rentals in residential zoning threaten the health, safety, welfare, and privacy of family-oriented neighborhoods, and cater to non-residents who have little incentive to be good neighbors. Director Guernsey's interpretation allows a use contrary to stated zoning purposes.

The Planning and Development Review Department published the *City of Austin Neighborhood Planning Guide to Land Use Standard, May 2008*, describing City land use policy ([ftp://ftp.ci.austin.tx.us/npzd/website/Planning\\_Zoning/land\\_use\\_policy\\_guide.pdf](ftp://ftp.ci.austin.tx.us/npzd/website/Planning_Zoning/land_use_policy_guide.pdf)). The *Guide* describes the purpose of single family detached or two family residential uses at typical urban and/or suburban densities (pg 14):

- Preserve the land use pattern and future viability of existing neighborhoods;
- Protect residential neighborhoods from incompatible business or industry and the loss of existing housing.

Principles of land use in the *Guide* include the following (pg 8):

- Ensure an adequate and diverse supply of housing for all income levels;
- Minimize negative effects between incompatible land uses;

- Discourage intense uses within or adjacent to residential areas;
- Avoid creating undesirable precedents;
- Ensure similar treatment of land use decisions on similar properties;
- Balance individual property rights with community interests and goals;
- Promote development that serves the needs of a diverse population.

The current administrative decision being appealed threatens these purposes and changes the land use patterns of existing family-oriented neighborhoods.

Much effort has gone into creating a revised comprehensive plan for Austin known as *Imagine Austin*. The *Vision Statement* (<http://www.ci.austin.tx.us/compplan/vision.htm>) has been published and includes the following principles:

- Austin is a beacon of sustainability, social equity and economic opportunity . . . where community needs and values are recognized.
- Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods and places whose character and history are preserved. Development occurs . . . while protecting and enhancing neighborhoods . . . in a manner friendly to families with children, seniors, and individuals with disabilities. Clear guidelines . . . provide certainty for residents and the business community.
- Austin values and respects its people. People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes.

### **Non-Conforming Use**

The decision being appealed would incorrectly make transient rentals in residential zoning a legal, permitted use under City Code. The Board of Adjustment is authorized under City Code to use their authority to correct this. Again, the only legal transient uses under Code are conforming Bed & Breakfasts (Group 1) and, in some areas, Group Homes. Other transient rentals in residential zoning do not qualify as a legal non-conforming use since none were in operation before the pertinent residential zoning codes went into effect.

### **Conclusion**

Director Guernsey's administrative decision is contrary to the City Code, as well as state statute, PRD's *Neighborhood Planning Guide*, and tenets of the evolving comprehensive plan. Transient rentals in residential zoning bring a steady stream of un-vetted, non-resident strangers into our neighborhoods without the same regulatory safeguards and limitations imposed on Bed & Breakfasts and Group Homes. They are not the legal or primary residence of the occupants. They introduce massive potential for abuse of both the rented house and the neighborhood: late and excessive noise, overflowing trash, parking issues, mistaken home invasions, late nights, verbal abuse, litter, heavy traffic, unregistered sex offenders, and a steady flow of strangers who have no stake in our community. (See Attachment F: Some Problems with Transient Rentals and Attachment G: Transient Rental Marketing.)

People who buy a home in a residential area have every reasonable expectation that zoning will limit the uses of the neighborhood to residential. Established zoning law and case law must prevail, otherwise zoning is meaningless. Why should the intrusive nature of one class

of commercial activity be allowed while others are segregated from neighborhoods by zoning? Property owners may complain that this limitation infringes on their right to do what they want with their property, but they would be the first in line to protest a homeless shelter, a convenience store, or a hog farm next door. That's what zoning is for. Property rights belong to those who use their property in compliance with Code.

It does not matter whether these transient rentals are paying hotel tax and whether that represents revenue for the City (albeit at the expense of legitimate hotel revenues). They are operating illegally in detriment to residential property owners. In actuality, the fact that these transient rentals are collecting a hotel tax corroborates the point that they are operating as transient facilities outside the allowed uses of single-family residences.

In summary, I strongly contend that the current administrative decision being appealed violates the intent and purpose of Code as shown by its plain meaning, the principles of sound land use planning declared by the City in its own documents, and the allowed transient uses in residential zoning as enumerated in code in which these transient rentals are not an exception on the list. I respectfully request that you grant this request for an appeal of the administrative decision outlined in the March 12, 2011 letter to me from Mr. Greg Guernsey.



2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: \_\_\_\_\_

**Note:** This item is not suitable for this appeal as worded, so a substitute wording/finding is used instead:

2. An appeal of the interpreted use provision could clearly deny a use which is out of character with the uses enumerated for, and with the objectives of, the district in question because: \_\_\_\_\_

The Director's interpretation allows a residential use that is out of character with Austin residential neighborhoods. City Code 25-2-2 states that the director of PDRD "**shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses**". City Code 25-2-51 describes the purposes and objectives of residential zoning districts to: "**reserve areas for residential occupancy**" consistent with the "**standards of public health, safety, and welfare**" and "**ensure adequate privacy** for each dwelling". By their very nature, transient rentals in residential zoning violate these objectives. Granting this appeal would deny this new use and protect the character of residential zoning.

The *City of Austin Neighborhood Planning Guide to Land Use Standard May 2008* includes land use principles such as: **ensure an adequate supply of housing**, minimize negative effects between incompatible uses, address public safety, avoid undesirable precedents, and balance individual property rights with community interests. The stated purpose in the *Guide* of single family residential uses are to: **preserve the future viability of existing neighborhoods** and **protect residential neighborhoods from incompatible business and the loss of existing housing**. Transient rentals in residential zoning are clearly out of character with the clear purpose and land use of residential neighborhoods; they destroy community and remove housing stock.

### **Nature of Residential Neighborhoods**

City Code 25-2-3 (A) describes residential uses to "include the occupancy of living accommodations on a **nontransient** basis". Part (B) describes the allowed residential uses, and only Bed and Breakfast Residential (in SF-2) and Group Residential (in other residential zones) provide for transient uses (both of which are strictly regulated in City Codes 25-2-6, 25-2-781, 25-2-841, and 25-12-213). Transient rentals (except for Bed & Breakfasts Group 1 and Group Homes) are excluded by Code from family-oriented neighborhoods. In Texas Local Government Code 214.211 (3), "residential" means having the character of a detached one-family or two-family dwelling that does not have the character of a facility used for the accommodation of **transient** guests.

The *Vision Statement* of the *Imagine Austin* comprehensive plan states that "Austin is livable" with "safe, well-maintained, stable, and attractive neighborhoods". That "development occurs . . . in a manner friendly to families with children, seniors, and individuals with disabilities." That "people across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes." People buy homes in Austin with the expectation of stability and residential use in neighborhoods zoned as such. Long-term neighbors get to know and look out for each other. Volunteers maintain our Neighborhood Watch programs.

## **Problems and Regulatory Burdens**

Transient rentals in residential zoning introduce a massive potential for abuse: excessive noise, overflowing trash, parking issues, late nights, verbal abuse, litter, heavy traffic, illegal signs, overlimit occupancy, work without permit, unnecessary interruptions, unpaid hotel occupancy taxes, unregistered sex offenders, etc. (See Attachment F: Some Problems with Transient Rentals.) These problems, and a steady flow of strangers who have no stake in our community, destroy the sanctity, safety, and stability of family-oriented neighborhoods, distressing older residents and parents with young children. They disrupt the sense of community and degrade the fabric of our neighborhoods.

Neither the City nor transient rental property owners can guarantee the peace and quiet enjoyment of our neighborhoods as proven by the long list of unresolved 311 complaints. These commercial uses will always be a nuisance in our neighborhoods regardless of any new regulations. There are additionally hidden and direct costs for the City and its residents. For example, a faster response time will be required from Code Compliance, including new weekend coverage, because disruptive "guests" are often long gone before Code Compliance arrives. Residents are not well-served when code complaints are answered days later with "no violation found" on empty premises. The vicious cycle repeats itself each time new "guests" arrive.

While approximately 80 transient rentals are currently registered with the City Controller, not all of them have paid their hotel taxes due, and hundreds more are ignoring state and local tax law. City employees will have to be assigned the job of collecting these hotel occupancy taxes, which won't even begin to cover the costs of the increased services needed.

Transient rentals in residential zoning are very different from nontransient rentals that are owner-occupied, including that there is less monitoring of guests. They function more like a motel but without the regulatory burden and costs, so they represent unfair competition for legitimate hotels and Bed &Breakfasts operating in accordance with Code.

City Attorney Kathleen Buchanan stated in a recent public stakeholder meeting that neighbors could document Code violations by transient rental guests and swear out a complaint in Municipal Court. However, this would be an undue burden on residents who would have to repeat this task for each set of guests who engage in illegal behavior.

## **Conclusion**

We live in neighborhoods where we know our neighbors and feel safe allowing our children to play outside. We do not want strangers coming and going and filling the house next door with tons of people and noise while we try to live normal lives. We want tourism to stay in tourist areas, including regulated hotel rooms. Many "guests" are not as considerate as transient rental owners portray them. We do not want our children playing in what used to be a family neighborhood, but now has turned into homes where different strangers come to stay every week. Your reversal of the current administrative decision being appealed will protect the character of our neighborhoods.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: \_\_\_\_\_

**Note:** This item is not suitable for this appeal as worded, so a substitute wording/finding is used instead:

3. The interpretation being appealed will grant a special privilege to one class of property inconsistent with other properties or uses similarly situated in that: \_\_\_\_\_

The decision being appealed will grant a special privilege to operators and owners of transient rental residential properties since this use is contrary to the clear intent and purpose of Code, and they are unregulated whereas their competitors are regulated. In addition, this use places an undue regulatory enforcement burden on adjacent residential property owners and nontransient residents.

Non-owner-occupied *nontransient* rentals have always been an allowed residential use under Code. Nontransient rentals are greater than 30 days in duration and constitute an allowed residential use by definition. On the other hand, *transient* rentals, for 30 days or less, are not an allowed residential use unless they are a defined and regulated Bed and Breakfast Group 1 or, in certain residential zones, a Group Home (Class 1) (City Code 25-2-3). Again, the current administrative decision being appealed would incorrectly make transient rentals in residential zoning a legal, permitted, and unregulated use under City Code

### **Unfair Competitive Advantage**

Bed and Breakfast Residential, Group Residential, and Hotel provide for transient uses that are strictly regulated in City Codes 25-2-6, 25-2-781, 25-2-841, and 25-12-213. Regulations include safety standards that are not applied to transient rentals in residential zoning. Currently, there are no inspectors assigned, and no regulations in force, for the use of transient rentals in residential zoning.

Hotels are heavily regulated in code for the public good. Transient rentals in residential zoning also constitute a class of public accommodations but they are unregulated. The current administrative decision being appealed will grant a special privilege to transient rentals in residential zoning not available to Bed & Breakfasts and hotels. This unfair and unregulated competition may damage hotels, cost the City in revenue and increased costs, and endanger the public.

### **Regulatory Enforcement Burden**

Neither the City nor transient rental property owners can guarantee the peaceful and quiet enjoyment of our neighborhoods as proven by a long list of unresolved 311 complaints. The burden and cost of enforcement falls to the City at the expense of residents and to the benefit of transient rental property owners.

Since transient rentals in residential zoning bring a steady stream of un-vetted, non-resident strangers into our neighborhoods without the same regulatory safeguards and limitations imposed on Bed & Breakfasts and Group Homes, the onus of the regulatory enforcement burden is placed directly on hapless neighbors of transient rentals, which is clearly contrary to the intent and purpose of residential zoning. In other words, the burden falls unfairly on permanent residents to police these properties continuously at no cost to the transient rental owner.

Some transient rental owners may make the argument to neighbors that if there is a problem with a "guest", just call them and they'll take care of it (though not in the case of 6621 Argentinia Rd., the property at the center of the administrative decision being appealed). However, that still leaves the job of policing "guests" to the neighbors. The regulatory burden should not fall to adjacent property owners in residential zoning.

### **Property Rights**

The property rights of transient rental owners should not trump the property rights of residents who have every expectation of the quiet enjoyment of their homes and the ability to raise their families in peace and safety. Long-term (nontransient) rentals have always been around and are still available to all of these transient rental property owners.

Most transient rental property owners are investors (rather than owner occupiers) since the majority of transient rentals in residential neighborhoods are available year round. This investment activity presents a problem for almost everybody else: other residents who need affordable housing, the neighborhood that needs stability, the city that loses on taxes from legitimate hotels, and sometimes even the "guest" who is endangered by the lack of safety regulations.

The Board of Adjustment often hears variance applications after the fact: people seeking forgiveness rather than permission. We have a similar case with transient rentals. Transient rentals in residential zoning have been an illegal use in our neighborhoods from the start. Bad behavior should not be rewarded—ignorance of the law by these property owners does not obligate the City or the residents to make them whole. They are not prohibited by Code from using their property for long-term rentals with permanent residents. Proponents of transient rentals argue that people have already invested in transient rentals in good faith and should be allowed to keep using them as they choose. Transient rentals in residential zoning have never been an allowed use in Austin other than for Bed & Breakfasts, which are heavily regulated with safeguards for our neighborhoods.

### **Property Values**

The operation of a transient rental in a residential zoning depresses property values since fewer people are willing to buy a house for their family near a transient rental and its potential problems.

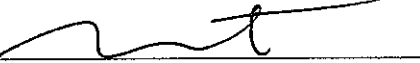
**APPLICANT/AGGRIEVED PARTY CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed  Printed Leslie D. Rosenstein

Mailing Address 6619 Argentina Rd.

City, State & Zip Austin, TX 78757 Phone 970-8433

**OWNER'S CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed  Printed Leslie D. Rosenstein

Mailing Address 6619 Argentina Rd.

City, State & Zip Austin, TX 78757 Phone 970-8433

## REQUESTS FOR INTERPRETATION

(Appeal of an Administrative Decision)

### REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- A completed application with all information provided. Additional information may be provided as an addendum to the application.
- Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- Tax plats: Full-size (not reduced and not altered) tax plats with the subject property clearly and accurately marked and showing all properties within a 300 foot radius of the property. These may be purchased from the Travis Central Appraisal District at 8314 Cross Park Drive, 834-9138.
- Payment of application fee of \$360.00 for residential zoning or \$660 for commercial zoning. Checks should be made payable to the City of Austin.

**An appeal of an administrative decision must be filed by the 20<sup>th</sup> day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.**

**If you have questions on this process contact Susan Walker at 974-2202.**

**To access the Land Development Code: sign on to: [www.ci.austin.us.tx/development](http://www.ci.austin.us.tx/development)**

**CHAPTER 11-2. HOTEL OCCUPANCY TAX.**

**11-2-1 DEFINITIONS.** In this chapter:

- (1) **CONSIDERATION** means the cost of a hotel room only if the room is ordinarily used for sleeping, and does not include the cost of any food served or personal services rendered to the room or a person in the room unless related to the cleaning and readying of the room for occupancy.
- (2) **DEPARTMENT** means the Financial and Administrative Services Department.
- (3) **HOTEL** means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration, but does not include a hospital, sanitarium, or nursing home.

**11-2-2 TAX LEVIED; EXCEPTIONS.**

(A) A tax of seven percent of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping.

(B) This chapter does not impose a tax on:

- (1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period; or
- (2) the United States, a governmental entity of the United States, or an officer or employee of the United States.

**11-2-3 COLLECTION OF TAX GENERALLY.**

(A) A person who owns, operates, manages, or controls a hotel or collects payment for the use or possession or for the right to the use or possession of a hotel room shall collect the tax levied by this chapter for the City.

(B) A person who collects the tax shall deposit the tax proceeds into a separate liability account and may not use the tax proceeds for any purpose other than payment to the City.

**25-1-182 INITIATING AN APPEAL.** An interested party may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than:

- (1) the 14th day after the date of the decision of a board or commission; or
- (2) the 20th day after an administrative decision.

**25-1-183 INFORMATION REQUIRED IN NOTICE OF APPEAL.** The notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

**25-1-184 NOTICE TO APPLICANT CONCERNING INTERESTED PARTY.** The responsible director shall notify an applicant in writing if there is an interested party to an administrative decision.

**25-1-185 NOTICE TO PRESIDING OFFICER AND APPLICANT.** On receipt of a notice of appeal or an amendment of a notice, the responsible director or building official shall promptly notify the presiding officer of the body to which the appeal is made and, if the applicant is not the appellant, the applicant.

**25-1-190 APPELLATE BURDEN.** The appellant must establish that the decision being appealed is contrary to applicable law or regulations.

#### 25-1-191 CONDUCT OF PUBLIC HEARING.

(A) Before opening a hearing, a body hearing an appeal shall decide preliminary issues raised by the parties, including whether to postpone or continue the hearing and whether the appellant has standing to appeal.

(B) A public hearing on an appeal shall proceed in the following order:

- (1) a report from City staff;
- (2) a presentation by the appellant;
- (3) comment by persons supporting the appeal;
- (4) comment by persons opposing the appeal; and
- (5) a rebuttal by the appellant.

25-1-192 POWER TO ACT ON APPEAL. A body hearing an appeal may, in accordance with the requirements of this title, exercise the power of the official or body whose decision is appealed. A decision may be upheld, modified, or reversed.

25-2-1 USE CLASSIFICATIONS. This article describes and classifies uses in the zoning jurisdiction. The major use categories are residential, commercial, industrial, civic, and agricultural.

#### 25-2-2 DETERMINATION OF USE CLASSIFICATION.

(A) The director of the Neighborhood Planning and Zoning Department shall determine the appropriate use classification for an existing or proposed use or activity.

(B) In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.

(C) An interested party may appeal a determination of the director of the Neighborhood Planning and Zoning Department under this section to the Board of Adjustment.

(D) The director of the Neighborhood Planning and Zoning Department shall notify the Planning Commission and the Zoning and Platting Commission of the filing of an appeal within 30 days of the filing, and of the disposition of the appeal within 30 days of disposition.

(E) The director of the Neighborhood Planning and Zoning Department shall maintain a list of determinations made under this section.

#### 25-2-3 RESIDENTIAL USES DESCRIBED.

(A) Residential uses include the occupancy of living accommodations on a nontransient basis. Residential uses exclude institutional living arrangements providing 24-hour skilled nursing or medical care and those providing forced residence, including mental hospitals and prisons.

(B) Residential use classifications are described as follows:

(1) BED AND BREAKFAST RESIDENTIAL use is the use of a residential structure to provide rooms for temporary lodging for overnight guests on a paying basis.

(2) CONDOMINIUM RESIDENTIAL use is the use of a site for attached or detached condominiums, as defined in the Texas Property Code.

(3) CONSERVATION SINGLE FAMILY RESIDENTIAL use is the use of a site for multiple detached dwelling units with each dwelling unit located on an individual lot and the remainder of the site being jointly-owned and preserved as open space.

(4) DUPLEX RESIDENTIAL use is the use of a site for two dwelling units within a single building, other than a mobile home.

(5) GROUP RESIDENTIAL use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.

(6) MOBILE HOME RESIDENTIAL use is the use of a site for occupancy of mobile homes on a weekly or longer basis. This use includes mobile home parks and mobile home subdivisions.

(7) MULTIFAMILY RESIDENTIAL use is the use of a site for three or more dwelling units, within one or more buildings, and includes condominium residential use.

(8) RETIREMENT HOUSING (LARGE SITE) use is the use of a site for more than 12 dwelling units designed and marketed specifically for the elderly, the physically handicapped, or both.

(9) RETIREMENT HOUSING (SMALL SITE) use is the use of a site for 3 to 12 dwelling units designed and marketed specifically for the elderly, the physically handicapped, or both.



(10) SINGLE-FAMILY ATTACHED RESIDENTIAL use is the use of a site for two dwelling units, each located on a separate lot, that are constructed with common or abutting walls or connected by a carport, garage, or other structural element.

(11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit, other than a mobile home.

(12) SMALL LOT SINGLE-FAMILY RESIDENTIAL use is the use of a small lot for only one detached dwelling unit, other than a mobile home.

(13) TOWNHOUSE RESIDENTIAL use is the use of a site for townhouses.

(14) TWO-FAMILY RESIDENTIAL use is the use of a lot for two dwelling units, each in a separate building, other than a mobile home.

#### 25-2-4 COMMERCIAL USES DESCRIBED.

(A) Commercial uses include the sale, rental, servicing, and distribution of goods, and the provision of services, other than those classified as industrial or civic uses.

(B) Commercial use classifications are described as follows:

(35) HOTEL-MOTEL use is the use of a site for the provision of rooms for temporary lodging. This use includes hotels, motels, and transient boarding houses.

#### 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS. The purposes of the residential district designations are to:

(1) reserve areas for residential occupancy and provide for a broad range of residential densities and variety of housing types consistent with the Comprehensive Plan and standards of public health, safety, and welfare;

(2) ensure adequate light, air, privacy, and open space for each dwelling;

(3) encourage compatibility between residential uses and other land uses;

(4) facilitate the planning for and provision of infrastructure improvements to serve anticipated population, dwelling unit density, traffic generation, and public service requirements; and

(5) promote energy conservation.

#### 25-2-6 CIVIC USES DESCRIBED.

(A) Civic uses include the performance of utility, educational, recreational, cultural, medical, protective, and governmental functions, and other uses that are strongly vested with public or social importance.

(B) Civic use classifications are described as follows:

(22) GROUP HOME, CLASS I (GENERAL) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for more than 6 but not more than 15 residents and not more than 3 supervisory personnel. This use includes foster homes, homes for the physically and mentally impaired, homes for the developmentally disabled, congregate living facilities for persons 60 years of age or older, maternity homes, emergency shelters for victims of crime, abuse, or neglect, and residential rehabilitation facilities for alcohol and chemical dependence.

(23) GROUP HOME, CLASS I (LIMITED) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for not more than 6 residents and 2 supervisory personnel. This use includes foster homes, congregate living facilities for persons 60 years of age or older, maternity homes, and homes for persons with physical or mental impairments not listed in the description of family home use. Persons with physical or mental impairments are persons whose impairments substantially limit one or more of the persons' major life activities, who have a record of the impairment, or who are regarded as having the impairment, as defined in the Americans with Disabilities Act.

#### 25-2-781 BED AND BREAKFAST RESIDENTIAL USE STRUCTURES CLASSIFIED.

(A) A residential structure may be used as a bed and breakfast residential use only if it qualifies as a Group 1 or Group 2 bed and breakfast residential use structure.

(B) Except as provided in Subsection (D), a Group 1 bed and breakfast residential use structure is a structure that contains not more than:

(1) five rental units if the building in which the bed and breakfast residential use is located is more than 50 years old; or

(2) three rental units if the building in which the bed and breakfast residential use is located is 50 years old or less.

(C) Except as provided in Subsection (D), a Group 2 bed and breakfast residential use structure is a structure that contains not more than:

(1) 10 rental units if the building in which the bed and breakfast residential use is located is more than 50 years old; or

(2) five rental units if the building in which the bed and breakfast residential use is located is 50 years old or less.

(D) For an establishment that operated as a lodging house residential use on or before October 1, 1994:

(1) a Group 1 bed and breakfast residential use structure is a structure that contains not more than five rental units; and

(2) a Group 2 bed and breakfast residential use structure is a structure that contains not more than 10 rental units.

#### 25-2-782 GENERAL REQUIREMENTS FOR A BED AND BREAKFAST RESIDENTIAL USE.

(A) A person may own only one bed and breakfast residential use facility.

(B) The owner must reside in the bed and breakfast residential use structure or in another residential structure on the lot on which the structure is located.

(C) The owner of a bed and breakfast residential use structure must own the land on which the structure is located.

(D) The owner must obtain a license to operate a bed and breakfast residential use structure. The license must be renewed annually.

(E) The owner of a bed and breakfast residential use may employ one or more persons who do not permanently reside on the lot on which the use is located to assist in the operation of the bed and breakfast residential use if the total hours worked by the employees does not cumulatively total more than 40 hours per week.

(F) Meal service is prohibited, except for breakfast service to an overnight guest.

(G) A register of guests must be maintained.

(H) A person may not structurally alter the exterior of a Group 1 residential use structure to change the existing residential character of the structure.

(I) A bed and breakfast residential use must be more than 1000 feet from an existing bed and breakfast residential use. A City council-adopted neighborhood plan that permits spacing of 1000 feet or less supersedes this subsection.

(J) A Group 1 bed and breakfast residential use must be located in the principal residential structure on the lot.

(K) Each bed and breakfast residential use structure of a Group 2 bed and breakfast residential use facility must comply with this section and other applicable Code requirements.

#### 25-2-783 NUMBER OF ROOMS.

(A) A bed and breakfast residential use structure may contain:

(1) one room for each 500 square feet of gross floor area within the structure if the owner resides in the structure; and

(2) one room for each 700 square feet of gross floor area within the structure if the owner resides in another residential structure on the lot.

(B) In this section, gross floor area does not include rooms occupied exclusively by the owner.

#### 25-2-784 PARKING REQUIREMENTS.

(A) Pervious pavers may be used as driveway and parking surface materials within the property boundaries.

(B) Not more than 25 percent of the parking surface may be constructed of gravel.

(C) A guest parking space is not permitted in the front yard of a bed and breakfast residential use structure.

25-2-785 CERTAIN ADVERTISING PROHIBITED. Advertising the street address of a bed and breakfast residential use through signs, billboards, television, radio, or newspapers is prohibited.

#### 25-2-841 GROUP AND FAMILY HOMES.

(A) A group home may not be located within a one-half mile radius of another group home. This requirement does not apply to a group home for persons sixty years of age or older. The council may waive this requirement.

(B) A family home may not be located within a one-half mile radius of any other family home. The council may waive this requirement.

(C) The residents of a group home or family home may not park on the premises of the home or an adjacent public right-of-way more than one motor vehicle for each bedroom.

(D) This subsection prescribes limits to the number of supervisory personnel.

(1) Not more than two supervisory personnel may reside in a group home, class I (limited) at one time.

(2) Not more than three supervisory personnel may reside in a group home, class I (general) at one time.

(3) Not more than three supervisory personnel may reside in a group home, class II at one time.

#### **25-12-1 BUILDING CODE.**

(A) The 2009 International Building Code published by the International Code Council is adopted and incorporated into this section with deletions and amendments in Subsection (B) and Section 25-12-3 (Local Amendments to the Building Code).

**25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.** The following provisions are local amendments to the 2009 International Property Maintenance Code. Each provision of this section is a substitute for any identically numbered provision of the International Property Maintenance Code deleted by Section 25-12-211(B) (International Property Maintenance Code) or is an addition to the Property Maintenance Code.

#### **[25-12-213] CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS**

**1301 DEFINITIONS.** The following words and terms shall, for the purposes of this chapter, have the meanings shown herein.

**BED AND BREAKFAST.** The use of an owner-occupied single-family residential structure to provide rooms for temporary lodging for overnight guests in return for compensation.

**BOARDING HOUSE.** A building other than a hotel, where lodging and meals are provided for more than six unrelated persons in return for compensation. When used in this chapter, the term Boarding House includes a transient boarding house.

**HOTEL/MOTEL.** A building or a part of a building, in which there are guest rooms, rooming units, or apartments which may be rented on a daily basis and are used primarily for transient occupancy, and for which desk service is provided. In addition, one or more of the following services may be provided: maid, telephone, bellboy, or furnishing of linen. When used in this chapter, the term hotel includes a motel.

**ROOMING HOUSE.** A building, other than a hotel, where lodging for more than six unrelated persons is provided without meals in return for compensation.

**1302 INSPECTIONS.** The code official shall make inspections to determine the condition of boarding houses, hotels, rooming houses, and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a boarding house, hotel, rooming house, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.

**1303 LICENSES AND PERMITS REQUIRED.** No person may operate a boarding house, hotel, rooming house, or bed and breakfast establishment unless a license for the operation, in the name of the operator and for the specific dwelling used, has been issued by the code official and is currently valid and in good standing. Unless specifically exempted by the provisions of Chapter 10-3 (Food and

Food Handlers) of the City Code, each boarding house and bed and breakfast establishment is required to have a permit as a food service establishment issued by the Health Authority.

#### 1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE

An owner, manager, or person in control of a hotel, boarding house, rooming house, or bed and breakfast establishment commits an offense if the owner or person leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter.

Each day that an owner, manager, or person in control of the property leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter is a separate occurrence. An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500 per offense, per occurrence, unless proof of a culpable mental state is proven. If proof of a culpable mental state is demonstrated, an offense under this section is punishable by a fine not to exceed \$2000 per occurrence.

1305 APPLICATION. An application for a license required by this chapter must be in writing and submitted to the code official.

1306 FEE. Each application for a rooming house, hotel, boarding house, or bed and breakfast establishment license must be accompanied by the payment of a fee in an amount established by separate ordinance, to be pro-rated on a quarterly basis.

1307 ISSUANCE. A boarding house, hotel, rooming house, or bed and breakfast establishment license shall be issued by the code official after the code official determines that the owner or operator has complied with all applicable ordinances and rules. A license shall not be issued by the code official for any applicant or location in the absence of proof of the applicant or location's substantial compliance with all applicable local hotel occupancy tax rules and regulations.

1308 LICENSE SUSPENSION. Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the boarding house, hotel, rooming house, or bed and breakfast establishment license shall be suspended. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, or bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended. On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, rooming house, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein. The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.

#### 1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL

The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:

1. the denial of an application for a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment;
2. the suspension of a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment;
3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected.

An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following setting on the scheduled agenda if a quorum is present at the hearing, unless the appellant requests a later date and waives the scheduled hearing.

**1310 EXPIRATION.** Each boarding house, hotel, rooming house, and bed and breakfast establishment license expires at the end of the calendar year for which it is issued, unless suspended or revoked as provided in this chapter.

**1311 TRANSFER AND NOTICE ON SALE OF PREMISES.** A license issued under this chapter is not transferable. Every person holding a license shall give written notice to the code official no later than 10 days before the conveyance, transfer, or any other disposition of the ownership of, interest in, or control of any boarding house, hotel, rooming house, or bed and breakfast establishment. The notice must include the name and address of the person succeeding to the ownership or control of the boarding house, hotel, rooming house, or bed and breakfast establishment.

**1312 DISPLAY.** The license required by this chapter must be displayed at all times in a conspicuous place designated by the code official within each boarding house, hotel, rooming house, or bed and breakfast establishment.

**Attachment B: Guernsey Interpretation Letter**



**PLANNING AND DEVELOPMENT REVIEW DEPARTMENT**  
P.O. Box 1088  
Austin, TX 78767

Ms. Leslie D. Rosenstein  
6619 Argentia Road  
Austin, TX 78757

March 12, 2011

Dear Ms. Rosenstein,

Thank you for your recent letter regarding short-term residential leases and vacation rentals by owner. I am responding on behalf of Mayor Lee Leffingwell and the City Council.

As you know, the Codes and Ordinances Committee of the Planning Commission and the full Planning Commission heard input on the issue and directed staff to continue to examine the issues related to short-term residential leases and vacation rentals by owner. As follow-up to those discussions, the January 27, 2011, meeting was held in order to allow property owners, neighbors and other concerned citizens an opportunity to express their views and make suggestions on how to move forward. We apologize for the conflict with the event at Palmer Auditorium and for not communicating the availability of parking at One Texas Center.

The issue is posted for discussion at the March 15<sup>th</sup> Codes and Ordinances Subcommittee meeting. During this meeting, staff will provide an update on the status of the proposed amendment, and legal staff will be present to discuss the classification of short term residential rentals in the land development code. The meeting will begin at 6:00 p.m., and will be held at One Texas Center, Room 325. A surface parking lot located at the front of the building, and a parking garage located to the rear of the building are available and offered to the public free of charge.

The Code Compliance Division continues to enforce all applicable regulations regarding residential housing. A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve.

Staff is working to develop recommendations to facilitate the resolution of these issues and policies to support the livability of Austin's neighborhoods.

We welcome your continued input on this issue. If you have any further questions, you may contact Robert Heil, Senior Planner, Planning and Development Review Department, at 974-2330.

Sincerely,

Greg Guernsey, Director  
Planning and Development Review Department

x: Sue Edwards, Assistant City Manager  
Jerry Rusthoven, PDRD

Robert Heil, PDRD

**Attachment C: Email to Kathleen Buchanan**



**Re: Clarification of Use Classification Determination** Wednesday, March 23, 2011 11:37 AM  
From: "David Orshalick" <dorshalick@yahoo.com>  
To: Kathleen.Buchanan@ci.austin.tx.us  
Cc: "Leslie Rosenstein" <Irosenstein@austin.rr.com>, "Greg Guernsey" <Greg.Guernsey@ci.austin.tx.us>  
Kathleen,

Thanks for talking with me on the phone regarding clarification of the use classification determination by Greg Guernsey (see below).

If my understanding is correct, you verified that two decisions were made in Greg's letter to Leslie: that transient rentals in residential zoning are not hotel/motel use, and that transient rentals in residential zoning are classified as single family residential uses in code.

Sincerely,  
David Orshalick

--- On Tue, 3/22/11, David Orshalick <dorshalick@yahoo.com> wrote:

From: David Orshalick <dorshalick@yahoo.com>  
Subject: Clarification of Use Classification Determination  
To: Kathleen.Buchanan@ci.austin.tx.us  
Cc: "Leslie Rosenstein" <Irosenstein@austin.rr.com>  
Date: Tuesday, March 22, 2011, 12:15 AM  
Kathleen,

Please be so kind as to clarify the "use classification determination", or administrative decision, made in Greg Guernsey's letter to Leslie Rosenstein dated March 12, 2011.

We are preparing an appeal of his interpretation of code to the BOA and wish to represent his interpretations accurately. We read his letter as saying two separate things:

1. A transient rental (30 days or less) in residential zoning is not classified as a hotel/motel use in code.
2. Transient rentals (30 day or less rentals of a single family home) in residential zoning are classified as single family residential uses in code.

We ask for this clarification in order for our appeal to be accurate, unambiguous, and specific. We ask for your response as soon as possible as time is of the essence in filing our appeal.

Thanks for your attention to this matter.

Sincerely,  
David Orshalick

**Attachment D: Email from Greg Guernsey**



**RE: BOA Appeal Form--Urgent--It doesn't work**

Tuesday, March 22, 2011 8:26 AM

**From:** "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>

**To:** "David Orshalick" <dorshalick@yahoo.com>

**Cc:** "Walker, Susan" <susan.walker@ci.austin.tx.us>, "Heil, Robert" <Robert.Heil@ci.austin.tx.us>, "Gibbs, Carol" <Carol.Gibbs@ci.austin.tx.us>, "Rusthoven, Jerry" <Jerry.Rusthoven@ci.austin.tx.us>, "Ramirez, Diana" <diana.ramirez@ci.austin.tx.us>

Hi David:

I checked with my Staff, but this is the only form we have available for an interpretation appeal. Attached is a link the BOA "Rules of Procedure." On page 2 of 7 is the Article 2 that addresses interpretation appeals and the applicable findings are found on page 3 of 7 (Paragraph D). It appears the appeal application is very similar, but not exactly matching the findings as listed under BOA Rules of Procedure. The response from my Department to Ms. Leslie Rosenstein was addressing her complaints about a property next door her home, a public meeting held on January 27<sup>th</sup> regarding vacation rentals by owners, the lack of code enforcement and an audit of hotel/motel occupancy taxes. Your arguments may be addressing a position contrary to the questions phrased in #2 and #3, but this is the only form that we have available for you to use. I would suggest that you proceed to use the existing form to the best of your ability and turn it in as soon as possible to Susan Walker or Diana Ramirez.

<http://www.ci.austin.tx.us/edims/document.cfm?id=134658>

Greg

---

**From:** David Orshalick [mailto:dorshalick@yahoo.com]

**Sent:** Monday, March 21, 2011 6:49 PM

**To:** Guernsey, Greg

**Subject:** RE: BOA Appeal Form--Urgent--It doesn't work

Greg,

We can't use the form you indicate as it is non-sensical in this case--none of us is asking for something for our particular property. It is impossible in this circumstance to answer items 2. and 3. the way they are written--the logic is all wrong. Please supply us with a form that works in this situation.

Sincerely,  
David Orshalick

--- On **Mon, 3/21/11**, Guernsey , Greg <greg.guernsey@ci.austin.tx.us> wrote:

**From:** Guernsey, Greg <greg.guernsey@ci.austin.tx.us>

**Subject:** RE: BOA Appeal Form--Urgent



To: "David Orshalick" <dorshalick@yahoo.com>  
Cc: "Walker, Susan" <susan.walker@ci.austin.tx.us>  
Date: Monday, March 21, 2011, 5:39 PM

Hi David:

You may use the form you attached to your e-mail to addressed me today. You may file it as the appellant/applicant. I assume you are appealing the decision in the letter addressed to Ms. Leslie Rosenstein dated March 12, 2011 (see attached PDF). You may attach a separate letter or statement regarding your status as an interested party. You may choose to use that form to address the reasons you believe the decision does not comply with the requirements of the Code or attach a separate letter or statement. I hope this is helpful. You may also contact Susan Walker if you have additional questions.

Greg

---

**From:** David Orshalick [mailto:dorshalick@yahoo.com]  
**Sent:** Monday, March 21, 2011 3:41 PM  
**To:** Guernsey, Greg  
**Subject:** Fw: BOA Appeal Form--Urgent

Greg,

According to 25-1-183, the notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

As explained in my previous email below, the current Interpretation Appeal form you have made available does not quite work (see items 1. and 2.) for our appeal of your March 12 transient rental administrative decision (use classification determination).

Please respond to my emails so we can finish our appeal application.

Thanks,  
David Orshalick

--- On Thu, 3/17/11, David Orshalick <dorshalick@yahoo.com> wrote:

From: David Orshalick <dorshalick@yahoo.com>  
Subject: BOA Appeal Form--Urgent

To: "Susan Walker" <susan.walker@ci.austin.tx.us>  
Cc: "GregGuernsey" <greg.guernsey@ci.austin.tx.us>, "DianaRamirez" <diana.ramirez@ci.austin.tx.us>, "RobertHeil" <Robert.Heil@ci.austin.tx.us>, "BrentLloyd" <Brent.Lloyd@ci.austin.tx.us>, "Leslie Rosenstein" <rosenstein@austin.rr.com>, "Paulette Kern" <paulettekern@sbcglobal.net>, "Edward L. Robinson" <elr@pisces.as.utexas.edu>, MFAANCON@aol.com, cbkeohane@prodigy.net, dbmc@texas.net, joe-rey@texas.net, wsgordon@prodigy.net, zane@zanecorp.com, "Kata F. Carbone" <kata@mail.utexas.edu>  
Date: Thursday, March 17, 2011, 3:18 PM

Susan,

Thank you for the BOA variance and appeal forms and for meeting with me today.

As we discussed, the BOA Interpretation Appeal is usually made by a property owner who seeks a use of his property denied by the code interpretation of the Director or other designated official. Usually, the appeal form you sent is appropriate. However, the appeal we wish to make in this case is not covered by the appeal form you sent.

Our appeal is for a restriction of the use classification determination made by Director Guernsey. His interpretation of code is not just for one property but for any properties zoned residential in Austin .

According to code, the Director supplies the forms used before the BOA. I promised you that I would make a stab at modifying the wording of the appeal form so it would work in this case. Here are possible rewrites of items 2. and 3. of the form you sent:

2. An appeal of the interpreted use provisions could clearly restrict a use which is out of character with the uses enumerated for, and with the objectives of, the zone in question because:

3. The interpretation will grant a special privilege to one class of property inconsistent with other properties or uses similarly situated in that:

Please supply us with a new appeal form that will apply to this situation as soon as possible. An email from Director Guernsey approving these modifications to the form will suffice. As you and I discussed, we are meeting this weekend to prepare our appeal, so having the new form wording will be necessary.

If I have not cc'd the appropriate people, please forward as necessary.

It is my understanding, pursuant to 25-1-182 (2), that we have until March 31 to file the appeal and that it will appear on the May 9 BOA agenda.

Also, given the general nature of this interpretation, that the City has failed to protect the welfare and safety of Austin neighborhoods, and that several residential property owners will be filing this appeal on behalf of Austin citizens, we ask that the \$360 filing fee for this appeal be waived.

Thanks for your attention to this matter. I look forward to your reply.

Sincerely,

David Orshalick

--- On Thu, 3/17/11, Walker , Susan <susan.walker@ci.austin.tx.us> wrote:

From: Walker, Susan <susan.walker@ci.austin.tx.us>

Subject: RE: BOA Appeal and Variance Forms

To: "David Orshalick" <dorshalick@yahoo.com>

Date: Thursday, March 17, 2011, 9:46 AM

Here are the Interpretation and Variance applications that you have requested. I was not aware that the forms were not coming up on the website. I will have someone check into this.

Thank you,

**Susan Walker**

**Senior Planner**

**Planning & Development Review Department**

**Phone: 512-974-2202**

**Fax: 512-974-6536**

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**From:** David Orshalick [mailto:dorshalick@yahoo.com]

**Sent:** Tuesday, March 15, 2011 11:37 PM

**To:** Walker, Susan

**Subject:** BOA Appeal and Variance Forms

Susan,

Please send me the link to the BOA Appeal and Variance forms. They don't seem to come up in any searches on the City website.

Also, could you put these forms up on the BOA webpage?

Does the Appeals form work for an appeal of a Use Classification Determination by the PDRD Director?

Thanks,

David Orshalick

971-1895

**ARTICLE 1. GENERAL PROCEDURES.**

(A) Refusal Required. No appeal shall be taken until and unless the responsible city official has first determined that a permit requires a variance or has rendered an interpretation of the regulations in question.

(B) Application Requirements. All appeals shall be filed on an application form provided by the staff liaison and shall be complete in all respects before being accepted for filing. The Board shall not act upon an application that is either substantially nonconforming or incomplete.

**ARTICLE 2. SUBSTANTIVE REQUIREMENTS FOR INTERPRETATION APPEALS**

(D) Findings. The Board shall make such interpretation as ought to be made. The Board may grant an appeal if it makes all of the following findings.

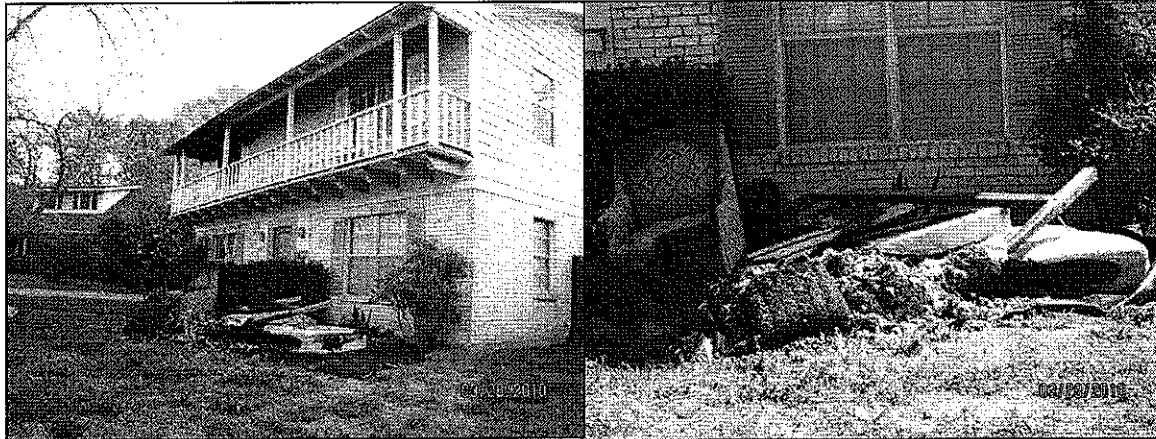
(1) There is reasonable doubt or difference of interpretation as to the specific intent of the regulations.

(2) The resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

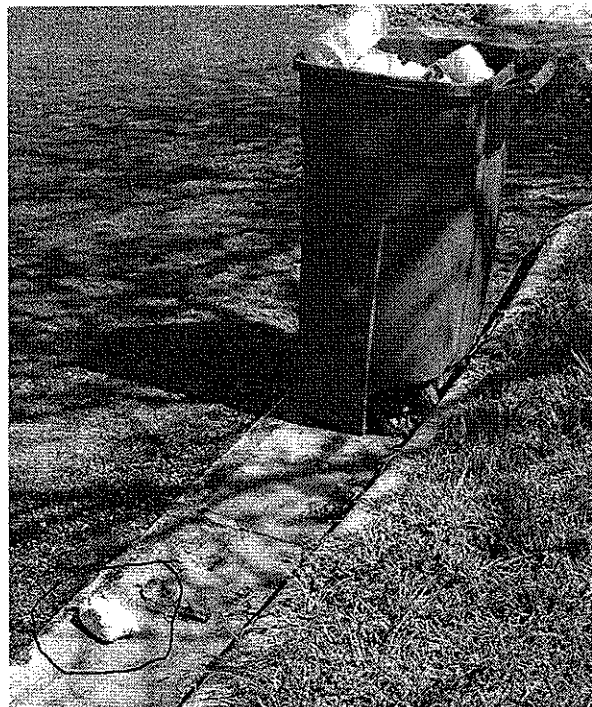
(3) When use provisions are being appealed, granting the appeal would clearly permit a use in character with the uses enumerated for the various districts and with the objective of the district in question.

## Attachment F: Some Problems with Transient Rentals

Example of what can happen when unsupervised strangers sleep next door. This mess (burned mattress) remained in the front yard of this transient rental for several days



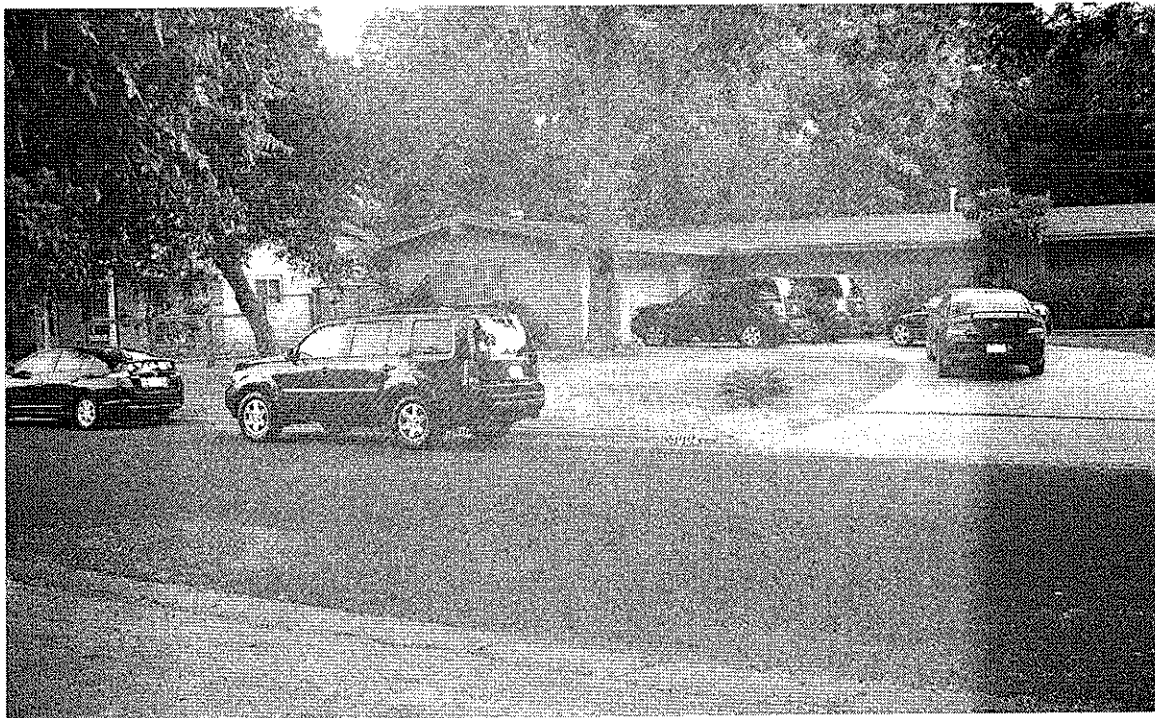
Noncompliance with acceptable trash maintenance (used diaper circled in red) left by "guests" at this transient rental



An illegal business sign posted at this transient rental for “Hancock Guest Cottages”



Six cars parked overnight at this transient rental—the following morning there were seven



## Attachment G: Transient Rental Marketing

Typical Internet marketing showing properties that routinely exceed the residential occupancy limit established by City Code 25-2-511 (A) (1): "not more than six unrelated persons may reside in a dwelling unit".

	<p><b>Relax by the pool in total privacy...</b></p> <p>7 Bedrooms, 4 Bathrooms, 1 Half Bath, Sleeps 16</p> <p>Austin area, Austin Vacation Rentals</p> <p>34 Reviews #169977</p>	<p><input type="checkbox"/> Compare</p> <p><b>\$700 - \$850</b> night <b>\$4,750</b> week</p>
	<p><b>Kimber Modern B &amp; B - Amazing Architecture, European Luxury, Hip Soco Area</b></p> <p>7 Bedrooms, 7 Bathrooms, 1 Half Bath, Sleeps 14</p> <p>Austin area, Austin Vacation Rentals</p> <p>#194150</p>	<p><input type="checkbox"/> Compare</p> <p><b>\$1,675 - \$1,970</b> night <b>\$12,315</b> week</p>
	<p><b>4500 sqft Casa Grande near Barton Springs- Walking to Restaurant Row &amp; Downtown</b></p> <p>6 Bedrooms, 5 Bathrooms, Sleeps 13</p> <p>Austin area, Austin Vacation Rentals</p> <p>15 Reviews #299446</p>	<p><input type="checkbox"/> Compare</p> <p><b>\$700</b> night</p>
	<p><b>Elegant, historic home in Downtown Austin. Walk to Whole Foods, Zilker Park</b></p> <p>6 Bedrooms, 6 Bathrooms, Sleeps 12</p> <p>Austin area, Austin Vacation Rentals</p> <p>#374164</p>	<p><input type="checkbox"/> Compare</p> <p><b>\$450 - \$1,650</b> night <b>\$2,500 - \$7,000</b> week <b>\$4,500 - \$11,000</b> month</p>

Typical Internet marketing reviews showing unlicensed provision of food and alcohol to transient rental guests

Rating

★★★★★ 5 out of 5

**Awesome Rental!!**

Sandee **Racine, WI**

Review Submitted: **November 22, 2010** Date of Stay: **October 2010**

My boyfriend and I rented this property Summer of 2010. Ron supplied everything we needed!! It was bigger than a hotel room. but not more than we needed. It was immaculately clean, had snacks, a Keurig coffee maker (which we will now be purchasing) and a w/d.

Rating

★★★★★ 5 out of 5

**Great for families--large or small!**

El Jefeito **Berlin, Germany**

Review Submitted: **August 30, 2010** Date of Stay: **July 2010**

Our family stayed at this house for five weeks during our summer vacation.

As a former Austinite, I was a bit reluctant about the location because I feel more at home down south, but Halcyon House changed my mind. Its location next to the bike trails, 10 minute walk to a nearby pool, and quick access to Burnet Road or Mopac makes staying here an excellent choice. If you can beat the traffic, you can get anywhere North or South as well as East and West quite quickly. As a matter of fact, a trip to the airport takes about 20 minutes if you head southeast rather than downtown, and you can make it back from the clubs in little time.

The house itself is quite spacious. The bedrooms comfortably accommodated our family of four plus a few guests. There are enough rooms upstairs and downstairs for people to come together or be alone as they wished. Although the bathrooms may a bit small for larger persons, we never had a problem with 2.5 bathrooms. The kitchen and laundry room are well furnished with new appliances rather than hand-me-downs. Although we could never quite figure out how to efficiently load the dishwasher, it took care of everything that we threw at it.

The owners are incredibly helpful and they delight in making little touches memorable. Whether its fresh cut flowers and a bottle of wine to help you start your stay or the delivery of fresh eggs from their own backyard coup, they know how to take care of their guests' wishes--and more! We would like to return here again and recommend it to others, especially if you are considering a relocation to Austin and you want to try out the Allandale neighborhood.



David Orshalick  
2710 West 49<sup>th</sup> ½ Street  
Austin, TX 78731

April 21, 2011

Board of Adjustment  
City of Austin  
P.O. Box 1088  
Austin, TX 78767

Re: Case #C15-2011-0037 Interpretation Appeal by Cynthia Keohane  
Case #C15-2011-0038 Interpretation Appeal by Leslie Rosenstein

Dear Chair and Members of the Board of Adjustment,

I am writing in support of the above-referenced appeals. On March 12, Director Guernsey made a Use Classification Determination that affects *every resident in Austin*. He ruled that "the frequent rental of a single family home for short durations" is classified as a single-family residential use. In other words, transient (30 days or less) rentals in residential zoning are classified as single family residential uses in Code.

This determination disregards the intent and purpose of City Code, PDR's *Neighborhood Planning Guide*, and the *Imagine Austin* Comprehensive Plan's *Vision Statement*. It corrupts the character of our family-oriented neighborhoods and opens the floodgates to transient rentals perpetually hosting new "guests" at the expense of residents. Creation of a new undefined transient residential use also removes countless homes from the housing stock.

Preservation of our neighborhoods—our most important asset and what makes Austin such a desirable place to live—is at the core of the residential zoning Codes. For example, City Code 25-2-51 states that the purpose of the residential district is to "reserve areas for residential occupancy". Short-duration stays are, by definition, not "residential" in nature; if someone stays short term in a house, they do not live there—they are merely visiting.

City Code 25-2-3 states that residential uses include the "occupancy of living accommodations on a nontransient basis", and that "single-family residential use is the use of a site for only one dwelling unit". Transient occupancy does not constitute a residential use according to City Code.

If these Code sections are not clear enough, the PDR *Neighborhood Planning Guide Land Use Standard* declares its purpose as a "framework for decision making" that offers "guidance to city staff, Planning Commission, City Council, developers, neighbors, and others on what kinds of land uses are encouraged or discouraged in a particular area." For residential zoning, the *Planning Guide* states that the purposes of "single family detached or two family residential uses" are to **"preserve the future viability of existing neighborhoods"** and to **"protect residential neighborhoods from incompatible business and the loss of existing housing"**. The *Planning Guide* also states general land use planning principles that include: ensuring an "adequate and diverse supply of housing for all income levels", minimizing "negative effects between incompatible land uses", and avoiding creating "undesirable precedents". This determination completely disregards City Code and the PDR *Planning Guide*.

Article 2 of the BOA Rules of Procedure requires three findings in order for the BOA to grant this Use Classification Determination appeal: (1) a reasonable doubt or difference of

interpretation of Code, (2) an interpretation that will not grant a special privilege, and (3) use provisions which are in character with the uses and objectives of the district in question.

Evidence for finding (1) was briefly presented above and is presented in much more detail in *Attachment A: Brief Summary of Restrictions* and in *Attachment B: Code Restrictions on "Transient Residential" Uses*.

For finding (2), granting this appeal removes the special privilege conferred on transient rental property owners by this Use Classification Determination. Transient rentals are unregulated whereas their competitors (B&B's, rooming and boarding houses, hotels) are regulated and supervised. There are no inspectors assigned, and no regulations in force, for the use of transient rentals in residential zoning, so this determination ignores health and safety concerns addressed by licensed and regulated competitors. In addition, this unfair and unregulated competition may damage hotels, cost the City in revenue and increased costs, and endanger the public.

Neither the City nor transient rental property owners can guarantee the peaceful and quiet enjoyment of our neighborhoods as indicated by a long list of unresolved 311 complaints. These commercial uses will always be a nuisance in our neighborhoods regardless of new regulations. The burden and cost of enforcement shifts to the City at the expense of residents and to the benefit of transient rental property owners. A true and full accounting of these costs, as well as a cost/benefit analysis, should have been undertaken before making this determination and granting this special privilege.

Unsupervised and unregulated transient rentals are not—and never have been—an allowed single-family residential use. However, it is reasonable to allow property owners to occasionally rent out their own houses during events such as SXSW or to swap houses for short vacation stays. In order to protect and preserve the character and safety of our neighborhoods, safeguards must be in place. *Attachment C: Draft Model Ordinance—Owner-Occupied Transient Rental Use* was crafted to allow home owners flexibility in the use of their property while causing the least amount of disruption and burden to adjacent residents. (It has been sent to the Planning Commission for review and consideration.) Rental of residential property for more than 30 days (nontransient) is not covered by this model ordinance since it is already an allowed residential use in City Code.

For finding (3), granting this appeal maintains the uses enumerated in City Code 25-2-3 and does not create a new use that is out of character with the uses and objectives of residential zoning. Also, transient rental property owners will not be denied these existing uses under Code since they can simply rent their residential structures on a nontransient (more than 30 days) basis.

Today there are 10 B&B's in Austin, but, due to the efficiency of Internet marketing, there are hundreds of transient residential rentals. In five years there will be thousands if this determination is allowed to stand. Mr. Guernsey erred in his determination. We ask that you preserve the neighborhood character of Austin as required by City Code. Thank you for your consideration and your service to Austin.

Sincerely,

  
David Orshalick

## Attachment A: Brief Summary of Restrictions

Find an expansion of this in *Attachment B: Code Restrictions on "Transient Residential" Uses*.

Excerpt	Source
<i>TRANSIENT. Occupancy of a dwelling or sleeping unit for not more than 30 days.</i>	2009 International Building Code, Section 310.2 Definitions. City Code 25-12-1 BUILDING CODE. (A) The 2009 International Building Code is adopted and incorporated into this section.
<i>"Residential" does not have the character of a facility used for the accommodation of transient guests.</i>	Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. Sec. 214.211
<i>The purposes of the residential district: reserve areas for residential occupancy consistent with the Comprehensive Plan and standards of public health, safety, and welfare.</i>	City Code 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS
<i>Residential uses include the occupancy of living accommodations on a nontransient basis.</i>	City Code 25-2-3 RESIDENTIAL USES DESCRIBED.
<i>(11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit.</i>	City Code 25-2-3 RESIDENTIAL USES DESCRIBED.
<i>In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.</i>	City Code 25-2-2 DETERMINATION OF USE CLASSIFICATION.
<i>While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, . . .</i>	Use Classification Determination letter of March 12, 2011 by PDR Director Guernsey
<i>Single family detached or two family residential uses. Purpose. (1) Preserve the future viability of existing neighborhoods; (3) Protect residential neighborhoods from incompatible business and the loss of existing housing.</i>	City of Austin Neighborhood Planning Guide Land Use Standard May 2008.
<i>Land Use Planning Principles. (2) Ensure an adequate and diverse supply of housing for all income levels; (3) Minimize negative effects between incompatible land uses; (13) Avoid creating undesirable precedents.</i>	City of Austin Neighborhood Planning Guide Land Use Standard May 2008.
<i>Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods . . . where community needs and values are recognized. . . . Development occurs . . . while protecting and enhancing neighborhoods. . . . People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods.</i>	Imagine Austin Comprehensive Plan Vision Statement.

## Attachment B: Code Restrictions on “Transient Residential” Uses

On March 12, PDR Director Greg Guernsey made a Use Classification Determination stating that “the frequent rental of a single family home for short durations” is classified as a single-family residential use. This determination disregards the intent and purpose of City Code as well as PDR’s *Neighborhood Planning Guide*. It corrupts the character of family-oriented neighborhoods and opens the floodgates to transient rentals perpetually hosting new “guests” at the expense of residents. This determination is clearly outside the concept of “residential” zoning.

The following table presents the relevant City Code and supporting materials showing that unsupervised and unregulated transient rentals are not—and never have been—an allowed single-family residential use.

Source Material	Commentary
<p>City Code 1-1-3 WORDS AND PHRASES. (A) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. (B) Words and phrases that have acquired a technical or particular meaning, whether by definition or otherwise, shall be construed accordingly.</p>	<p>In any statutory interpretation, the plain meaning of ordinary English words in their ordinary senses is assumed.</p>
<p>Dictionary.com definitions:</p> <p><i>Residential</i>—suited for or characterized by private residences: <i>a residential neighborhood</i>; relating to or having residence.</p> <p><i>Residence</i>—the place, especially the house, in which a person lives or resides; dwelling place.</p> <p><i>Reside</i>—to dwell permanently or for a considerable time.</p> <p><i>Dwell</i>—to live or stay as a permanent resident.</p> <p><i>Dwelling</i>—a building or place of shelter to live in; place of residence; abode; home.</p>	<p>Short-duration stays are, by definition, not “residential” in nature. The term “short-term residential” as a use or rental is an oxymoron. If someone stays short term in a house, then they do not live there—they are not using it as their residence. An easy test of “residency” is to ask where a person votes.</p>
<p>City Code 25-12-1 BUILDING CODE. (A) The 2009 International Building Code published by the International Code Council is adopted and incorporated into this section.</p> <p><i>2009 International Building Code, Section 310.2 Definitions. TRANSIENT. Occupancy of a dwelling or sleeping unit for not more than 30 days.</i></p>	<p>The <i>2009 International Building Code</i> is made part of City Codes and clearly defines the word “transient” as 30 days or less.</p>

Source Material	Commentary
<p>Texas Local Government Code, Chapter 214 MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES. Sec. 214.211 DEFINITIONS. (3) "Residential" means having the character of a detached one-family or two- family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests. (5) "Commercial" means a building for the use or occupation of people for: (A) a public purpose or economic gain.</p>	<p>This state statute covers the building of residentially zoned structures with the clear expectation that those structures will be used for nontransient purposes. In other words, when a residential building permit is issued, the resulting use is intended to be nontransient. In fact, transient rentals are defined as a "commercial" use by this section of state statute.</p>
<p>City Code 25-2-51 PURPOSES OF RESIDENTIAL DISTRICTS. The purposes of the residential district designations are to: (1) reserve areas for residential occupancy and provide for a broad range of residential densities and variety of housing types consistent with the Comprehensive Plan and standards of public health, safety, and welfare; (2) ensure adequate light, air, privacy, and open space for each dwelling; (3) encourage compatibility between residential uses and other land uses.</p>	<p>The clear purpose of residentially-zoned structures is for residential occupancy, not transient occupancy. The latest Vision Statement for the Comprehensive Plan precludes transient rentals as a residential use.</p> <p>Transient rentals of residential structures are an incompatible use in residential zoning. They detract from the character of family-oriented neighborhoods; threaten the health, safety, welfare, and privacy of residents; displace families; remove housing stock; and cater to non-residents who have little incentive to be good neighbors.</p>

Source Material	Commentary
<p>City Code 25-2-1 USE CLASSIFICATIONS. The major use categories are residential, commercial, industrial, civic, and agricultural.</p> <p>City Code 25-2-3 RESIDENTIAL USES DESCRIBED.</p> <p>(A) Residential uses include the occupancy of living accommodations on a nontransient basis.</p> <p>(B) Residential use classifications are described as follows:</p> <ul style="list-style-type: none"> <li>(1) BED AND BREAKFAST RESIDENTIAL</li> <li>(2) CONDOMINIUM RESIDENTIAL</li> <li>(3) CONSERVATION SINGLE FAMILY RESIDENTIAL</li> <li>(4) DUPLEX RESIDENTIAL</li> <li>(5) GROUP RESIDENTIAL</li> <li>(6) MOBILE HOME RESIDENTIAL</li> <li>(7) MULTIFAMILY RESIDENTIAL</li> <li>(8) RETIREMENT HOUSING (LARGE SITE)</li> <li>(9) RETIREMENT HOUSING (SMALL SITE)</li> <li>(10) SINGLE-FAMILY ATTACHED RESIDENTIAL</li> <li>(11) SINGLE-FAMILY RESIDENTIAL use is the use of a site for only one dwelling unit, other than a mobile home.</li> <li>(12) SMALL LOT SINGLE-FAMILY RESIDENTIAL</li> <li>(13) TOWNHOUSE RESIDENTIAL</li> <li>(14) TWO-FAMILY RESIDENTIAL</li> </ul>	<p>Non-residential uses, such as transient rentals, are allowed in other major use categories.</p> <p>Of these 14 defined residential uses in the list of residential use classifications, all but two are nontransient. Yet even these two—Bed and Breakfast Residential and Group Residential—are heavily regulated by other Code provisions and require the owner or owner's agent to reside permanently (have a nontransient presence) on the property.</p> <p>While an unregulated and unsupervised <i>transient</i> use is not allowed by Code, <i>nontransient</i> residential rentals are, and always have been, an allowed residential use. Nothing in Code prevents residential property owners from renting their property on a nontransient basis: greater than 30 days.</p> <p>A dwelling unit (a place of residence) cannot be construed to allow accommodation of transient non-residents. There is nothing in the definition of single-family residential use that allows for transient occupancy.</p>
<p>City Code 25-2-2 DETERMINATION OF USE CLASSIFICATION. (A) The director of the Neighborhood Planning and Zoning Department shall determine the appropriate use classification for an existing or proposed use or activity. (B) In making a determination under this section, the director of the Neighborhood Planning and Zoning Department shall consider the characteristics of the proposed use and the similarities, if any, of the use to other classified uses.</p>	<p>The Director of PDR is empowered by Code to interpret use classifications, not to create new ones in contravention of Code. In addition, he must consider the characteristics and similarities of a use with other classified uses.</p>

Source Material	Commentary
<p>Use Classification Determination letter of March 12, 2011 by PDR Director Guernsey states: "[1] A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code. [2] While these uses are still classified as single family residential uses, the frequent rental of a single family home for short durations, can make the minor conflicts often experienced by all neighbors more difficult to resolve."</p>	<p>While hotel/motel use is not allowed in residential zoning, it is not in dispute as a commercial use. Transient rentals are, by definition, not "residential" use since people do not reside, dwell, or live permanently in these structures. The Director of PDR cannot ignore the characteristics and similarities with other uses in his determination since Bed and Breakfast use is a more closely related transient use than Single-Family Residential.</p>
<p>25-2-6 CIVIC USES DESCRIBED. (B)(22) GROUP HOME CLASS I</p> <p>25-2-781 BED AND BREAKFAST RESIDENTIAL USE STRUCTURES CLASSIFIED.</p> <p>25-2-782 GENERAL REQUIREMENTS FOR A BED AND BREAKFAST RESIDENTIAL USE.</p> <p>25-2-783 NUMBER OF ROOMS.</p> <p>25-2-784 PARKING REQUIREMENTS.</p> <p>25-2-841 GROUP AND FAMILY HOMES.</p> <p>25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE. CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS.</p> <p>1301 DEFINITIONS. 1302 INSPECTIONS.</p> <p>1303 LICENSES AND PERMITS REQUIRED.</p> <p>1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE.</p> <p>1305 APPLICATION. 1306 FEE. 1307 ISSUANCE.</p> <p>1308 LICENSE SUSPENSION. 1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL.</p> <p>1310 EXPIRATION.</p> <p>1311 TRANSFER AND NOTICE ON SALE OF PREMISES.</p> <p>1312 DISPLAY.</p>	<p>The two exceptions to transient rental use in residential zoning—Bed and Breakfast Residential and Group Residential—are heavily regulated by other Code provisions and require the owner or owner's agent to reside permanently (have a nontransient presence) on the property. The list of ordinances regulating these uses is extensive and serves as the basis for a model ordinance (see the document <i>Model Ordinance: Owner-Occupied Transient Rental</i>).</p> <p>An unregulated and unsupervised transient rental of residential property clearly contravenes the intent and purpose of Code and threatens the health, safety, and welfare of the public.</p>

Source Material	Commentary
<p>City Code CHAPTER 11-2. HOTEL OCCUPANCY TAX. 11-2-1 DEFINITIONS. In this chapter: (3) HOTEL means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration.</p> <p>11-2-2 TAX LEVIED; EXCEPTIONS. (A) A tax of seven percent of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping. (B) This chapter does not impose a tax on: (1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period.</p> <p>11-2-3 COLLECTION OF TAX GENERALLY. (A) A person who owns, operates, manages, or controls a hotel or collects payment for the use or possession or for the right to the use or possession of a hotel room shall collect the tax levied by this chapter for the City. (B) A person who collects the tax shall deposit the tax proceeds into in a separate liability account and may not use the tax proceeds for any purpose other than payment to the City.</p>	<p>Both the City and the State (Texas Tax Code CHAPTER 156. HOTEL OCCUPANCY TAX) recognize transient rentals as a special, taxable, commercial use of property by their Hotel Occupancy Tax (HOT) provisions.</p> <p>HOT must be collected and remitted for any hotel room occupied for less than 30 days. This chapter of Code clearly includes transient rentals in residential zoning; the City Controller's office will confirm that the owner of any room rented for more than \$2 per day—including transient rentals in residential zoning—must register, collect, and remit HOT. Since the City already collects HOT from at least 50 transient rentals in residential zoning in Austin (in addition to collections from B&amp;B's), this serves as prima facie evidence of their "transient" use in residential zoning.</p> <p>According to the City Controller's office, all 10 B&amp;B's in Austin pay HOT, while only 80 of the over 250 transient rentals in Austin do. B&amp;B owners know to pay the tax because they are licensed and regulated, while other transient rentals are not. In any event, the definition of HOTEL for the purposes of this chapter in Code clearly includes transient rentals and does not require a code amendment for clarity.</p>



Source Material	Commentary
<p>City of Austin <i>Neighborhood Planning Guide to Land Use Standard</i> May 2008.</p> <p>[Page 4] Why do we practice land use planning? A key function of land use plans is to ensure that land use decisions take into account the needs of communities, the economy and the environment. A Framework for Decision Making. The plans offer guidance to city staff, Planning Commission, City Council, developers, neighbors, and others on what kinds of land uses are encouraged or discouraged in a particular area. This guidance provides direction for decision makers about future land uses.</p> <p>[Page 14] Single family detached or two family residential uses at typical urban and/or suburban densities. Purpose. (1) Preserve the land use pattern and future viability of existing neighborhoods; (3) Protect residential neighborhoods from incompatible business or industry and the loss of existing housing.</p> <p>[Page 8] Land Use Planning Principles. (2) Ensure an adequate and diverse supply of housing for all income levels; (3) Minimize negative effects between incompatible land uses; (5) Discourage intense uses within or adjacent to residential areas; (13) Avoid creating undesirable precedents; (15) Ensure similar treatment of land use decisions on similar properties; (16) Balance individual property rights with community interests and goals; (18) Promote development that serves the needs of a diverse population.</p>	<p>The Planning and Development Review Department publishes this planning guide describing land use policy.</p> <p>Given the <i>Guide's</i> stated purposes of single family residential uses and of land use planning principles, the unsupervised and unregulated transient rental of residential structures is clearly an incompatible use and sets a dangerous precedent.</p> <p>Transient rentals in residential zoning are out of character with the clear purpose and land use of residential neighborhoods: they negate community and remove housing stock.</p>

Source Material	Commentary
<p><i>Imagine Austin Comprehensive Plan Vision Statement. A Vision for Austin's Future.... Austin is a beacon of sustainability, social equity and economic opportunity... where community needs and values are recognized.... Austin is livable. One of Austin's foundations is its safe, well-maintained, stable, and attractive neighborhoods and places whose character and history are preserved. Development occurs... while protecting and enhancing neighborhoods... in a manner friendly to families with children, seniors, and individuals with disabilities. Clear guidelines... provide certainty for residents and the business community.... Austin values and respects its people. People across all parts of the city and of all ages and income levels live in safe, stable neighborhoods with a variety of affordable and accessible homes.</i></p>	<p>A vision statement is "a reflection of community values and aspirations, a consensus of public opinion on key issues, and a description of the desired future character of the community". Residents of Austin have volunteered thousands of hours to help City staff craft a responsive Comprehensive Plan.</p> <p>Some have questioned the sincerity of the collaborative spirit and the validity of the planning process. By creating a transient single-family residential use by fiat that is contrary to Code, State statute, PDR Planning Guide, and Comprehensive Plan, the Director of PDR demonstrates that the Comprehensive Plan is a sham.</p> <p>Austinites cannot continue to work seriously on a Plan rendered a sham by allowing an unsupervised and unregulated transient residential use.</p> <p>The Vision Statement points to stable neighborhoods for the benefit of Austin residents. Unsupervised, unregulated, and clearly illegal transient uses destabilize and destroy Austin neighborhoods.</p>

## Attachment C: Draft Model Ordinance—Owner-Occupied Transient Rental Use

Unsupervised and unregulated transient residential use endangers public health, safety, and welfare, and destroys the character of family-oriented neighborhoods. It is contrary to the very notion of “residential” as places where people live on a permanent basis. A model ordinance for Owner Occupied Transient Rental (OOTR) use, based in large part on City Code for the similar Bed and Breakfast use, is shown in the table below. The amended or changed Code sections are highlighted.

It is reasonable to allow property owners to occasionally rent out their own houses during events such as SXSW or to swap houses for short vacation stays. However, in order to protect and preserve our neighborhoods, safeguards must be in place. This model ordinance was crafted to allow home owners flexibility in the use of their property while insuring the integrity and character of Austin neighborhoods and causing the least amount of disruption and burden to adjacent residents.

In this model ordinance, transient rental residential use by a home owner is limited to no more than two separate rentals in a calendar year, and with a combined duration of no more than 30 days, since any more is too disruptive of neighborhood life and is really not a residential use of the property.

In addition, transient rental use by investors, rather than home owners, is prohibited since it removes housing stock, which is contrary to the City’s neighborhood planning guidelines, and to the express purpose of residential zoning (City Code 25-2-51). Of course, rental of any residential property for more than 30 days (nontransient) is not covered by this model ordinance since it is already—and has always been—an allowed residential use in City Code.

OOTR Amendments	Source Notes
<p>25-2-3 RESIDENTIAL USES DESCRIBED.</p> <p>(B) Residential use classifications are described as follows:</p> <p><b>(15) OWNER-OCCUPIED TRANSIENT RESIDENTIAL use is the unsupervised use of a residential structure to provide occasional furnished guest accommodations on a paying basis.</b></p>	<p>Adds an OOTR residential use to the existing 14 residential uses in this section of City Code</p>
<p>Subpart C. Requirements for an Owner-Occupied Transient Use.</p> <p><b>25-2-788 OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE STRUCTURES CLASSIFIED.</b></p> <p>(A) Any conforming residential structure may be used as an owner-occupied transient rental use in any residential base district as long as the occupancy limits set by Section 25-2-511 (<i>Dwelling Unit Occupancy Limit</i>) for the property are not exceeded before or during the transient rental.</p> <p>(B) The use of a residential unit for an owner-occupied transient rental use shall not violate any applicable conditions, covenants, or other restrictions on real property.</p>	<p>Adds a new Subpart C in Code based on the content from <i>Subpart B. Requirements for a Bed and Breakfast Use</i>.</p> <p>Covenants clause from Monterey County, CA zoning ordinance Title 21</p>

OOTR Amendments	Source Notes
<p>25-2-789 GENERAL REQUIREMENTS FOR AN OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE.</p> <p>(A) A person may own only one owner-occupied transient residential use facility.</p> <p>(B) The owner must reside in the owner-occupied transient residential use structure or in another residential structure on the lot on which the structure is located.</p> <p>(C) The owner of an owner-occupied transient residential use structure must own the land on which the structure is located.</p> <p>(D) The owner must obtain a license to operate an owner-occupied transient residential use structure. The license must be renewed annually. The City Manager or his or her designee shall have the authority to impose additional standards and/or conditions on these licenses as necessary to achieve the objectives of this Section and other applicable provisions of Code.</p> <p>(E) The owner of an owner-occupied transient rental must vacate the premises during the term of the rental. In the event the owner does not vacate the premises during a transient rental, the rental shall be deemed an unlicensed bed and breakfast use and the applicable Code and remedies shall apply.</p> <p>(F) Concurrent transient rentals of any or all structures on the lot of an owner-occupied transient rental are prohibited.</p> <p>(G) An owner-occupied transient residential use is limited to no more than two separate, non-concurrent rentals in a calendar year and with a combined duration of no more than 30 days. There is not a limit on the number of nontransient, non-concurrent rentals exceeding 30 days each (other than that the owner must maintain the property as his or her residence), and these nontransient rentals do not count toward the two transient rental limit, or the 30 day combined duration limit, in a calendar year.</p> <p>(H) An owner-occupied transient residential use must be located in the principal residential structure on the lot. Transient (30 days or less) rental of any other structure on the lot, not in conjunction with the rental of the principal residential structure, is prohibited unless allowed elsewhere in Code as a commercial hotel/motel use for the lot.</p> <p>(I) A house number, visible from the street, shall be maintained.</p> <p>(J) Meal service and/or the provision of food and/or beverages are prohibited.</p> <p>(K) A register of guests must be maintained.</p> <p>(L) The owner of an owner-occupied transient rental shall furnish the name, address, and telephone number(s) of a local contact person on the license application and made available for public review. The license holder shall promptly notify the code official of any change in the local contact person's address or telephone number. The local contact person shall be available 24 hours a day to respond to tenant and neighborhood questions or concerns and to otherwise be responsible for assuring that the transient rental unit complies with the requirements of the license issued and the provisions of this Section and other applicable provisions of Code.</p> <p>(M) The owner or owner's agent shall display on the exterior of an owner-occupied transient rental a notice provided by the City containing a 24-hour 7-day phone number for the contact person responsible for the facility to take complaints regarding its operation. The exterior display will also contain the number of bedrooms, maximum number of overnight occupants permitted to stay in the unit, and the maximum number of vehicles for overnight occupants. The notice shall be in plain view of the general public and/or common areas and shall be maintained in good condition at all times.</p> <p>(N) Noise or other disturbance outside the short term rental unit is prohibited.</p>	<p>Additional standards clause from Encinitas, CA ordinance Chapter 9.38</p> <p>House # clause from Ordinance #69 from Tillamook County, OR</p> <p>Contact person clause from Monterey County, CA zoning ordinance Title 21</p> <p>Exterior display clause from Encinitas, CA ordinance Chapter 9.38</p>



OOTR Amendments	Source Notes
<p>after 10:00 pm. This includes, but is not limited to, swimming pools, hot tubs, decks, portals, porches, balconies, or patios. All occupants of an owner-occupied transient rental shall be informed in writing by the owner or owner's agent of relevant City ordinances including, but not limited to, the nuisance, noise, and water conservation ordinances.</p> <p>(O) The owner of an owner-occupied transient rental shall use best efforts to insure that the occupants and/or guests do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of City Code or any applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs. Upon receipt of a complaint, the owner, owner's agent, or contact person shall attempt within 20 minutes to contact the occupants of an owner-occupied transient rental by phone or in person concerning the conduct of an occupant, and within 24 hours of the initial call use best efforts to prevent the recurrence of such conduct by the occupants and to take corrective action to address any violation. Failure to respond in a timely manner is grounds for immediate eviction of the occupants of the owner-occupied transient rental by the police. It is not intended that the property owner, local agent, or contact person act as a peace officer or place himself or herself in an at-risk situation.</p> <p>(P) A person may not structurally alter the exterior of an owner-occupied transient residential use structure to change the existing residential character of the structure.</p> <p>(Q) Each owner-occupied transient residential use structure must comply with this section and all other applicable Code requirements.</p> <p><b>25-2-790 OCCUPANCY LIMITS.</b></p> <p>(A) The number of occupants of an owner-occupied transient rental shall not exceed the lesser of:</p> <ol style="list-style-type: none"> <li>(1) the limits set by Section 25-2-511 (<i>Dwelling Unit Occupancy Limit</i>) for the entire property and for each residential unit on the property, or</li> <li>(2) two times the number of parking spaces on the property plus, only if available, one parking space directly in front of the property on the street.</li> </ol>	<p>Noise clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p> <p>Complaint clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p> <p>Complaint clause from Encinitas, CA ordinance Chapter 9.38</p> <p>Complaint clause from Ordinance #69 from Tillamook County, OR</p>
<p><b>25-2-791 PARKING REQUIREMENTS.</b></p> <p>(A) Pervious pavers may be used as driveway and parking surface materials within the property boundaries.</p> <p>(B) Not more than 25 percent of the parking surface may be constructed of gravel.</p> <p>(C) A guest parking space is not permitted in the front yard of an owner-occupied transient residential use structure.</p> <p>(D) At least one parking space shall be available on the property for use by occupants of the owner-occupied transient rental.</p> <p>(E) The property owner shall limit the number of vehicles of overnight occupants to the number designated in the license which shall not exceed the number of designated on-site parking spaces plus one. All designated on-site parking spaces shall be made available for the vehicles of occupants of an owner-occupied transient rental.</p> <p>(F) Occupants shall not park recreational vehicles on site or on the street of an owner-occupied transient rental.</p>	<p>Parking clause from Encinitas, CA ordinance Chapter 9.38</p>

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<p><b>25-2-792 SOLID WASTE MANAGEMENT.</b></p> <p>Trash and refuse from an owner-occupied transient rental shall not be left or stored within public view except from sunset of the day prior to trash pick-up until up to midnight on the day designated for trash pick-up. All trash will be in approved receptacles.</p>	<p>Garbage clause from Encinitas, CA ordinance Chapter 9.38</p>
<p><b>25-2-793 OCCUPANT SAFETY AND WELFARE.</b></p> <p>(A) An owner-occupied transient rental shall comply with all regulations insuring the safety, health, and welfare of occupants and adjacent neighbors including but not limited to:</p> <ol style="list-style-type: none"> <li>(1) At least one functioning fire extinguisher.</li> <li>(2) A properly maintained smoke detector in each sleeping area, outside each sleeping area, and in each additional story and basement without a sleeping area.</li> <li>(3) At least one operable emergency escape and rescue opening for each sleeping area.</li> </ol>	<p>Safety clauses from Ordinance #69 from Tillamook County, OR</p>
<p><b>25-2-794 INSURANCE.</b></p> <p>The owner of an owner-occupied transient rental shall maintain adequate property insurance coverage for the rental unit. Proof of insurance shall be required at time of license issuance and such other times as may be requested by the City.</p>	<p>Insurance clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p>
<p><b>25-2-795 CERTAIN ADVERTISING PROHIBITED.</b></p> <p>(A) Advertising the street address of an owner-occupied transient rental through signs, billboards, television, radio, newspapers, or Internet is prohibited.</p> <p>(B) Availability of an owner-occupied transient rental unit to the public shall not be advertised on site.</p>	<p>Availability clause from Monterey County, CA zoning ordinance Title 21</p>
<p><b>25-2-796 RECORDS AVAILABILITY</b></p> <p>The owner or owner's agent of an owner-occupied transient rental shall make available to the City for its inspection all records relating to the operation of the owner-occupied transient rental in order to determine compliance with all applicable Codes.</p>	<p>Records clause from the Short Term Rental Ordinance of the City of Santa Fe, NM</p>
<p><b>25-2-797 RENTAL OF AN OWNER-OCCUPIED TRANSIENT RESIDENTIAL USE FACILITY FOR GATHERINGS.</b></p> <p>(A) The use of an owner-occupied transient residential use facility as a rented site for a gathering, including a wedding, is a conditional use.</p> <p>(B) A conditional use permit may be approved only if:</p> <ol style="list-style-type: none"> <li>(1) the owner-occupied transient residential use structure is located in a multifamily residence (limited density) or less restrictive base district; and</li> <li>(2) a certificate of occupancy has been issued that authorizes the use of the site for a gathering.</li> </ol> <p>(C) The maximum number of attendees at a gathering held under this section equals four times the total of the number of parking spaces on the property that are not required for other uses on the property plus two spaces on the street.</p> <p>(D) Amplified live outdoor music is prohibited at a gathering.</p> <p>(E) A gathering must end at 9:00 p.m. on Sunday through Thursday and at 10:30</p>	

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<p>p.m. on Friday and Saturday.</p> <p>(F) The Land Use Commission may not approve an increase of the maximum number of attendees, authorize amplified live outdoor music, or extend the hours of operation through the conditional use process.</p> <p>(G) The Land Use Commission may reduce the hours of operation.</p>	
<p>25-12-213 LOCAL AMENDMENTS TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.</p> <p>CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, <del>OWNER-OCCUPIED TRANSIENT RENTAL</del>, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS</p> <p>1301 DEFINITIONS</p> <p>The following words and terms shall, for the purposes of this chapter, have the meanings shown herein.</p> <p>BED AND BREAKFAST. The use of an owner-occupied single-family residential structure to provide rooms for temporary lodging for overnight guests in return for compensation.</p> <p>BOARDING HOUSE. A building other than a hotel, where lodging and meals are provided for more than six unrelated persons in return for compensation. When used in this chapter, the term Boarding House includes a transient boarding house.</p> <p>HOTEL/MOTEL. A building or a part of a building, in which there are guest rooms, rooming units, or apartments which may be rented on a daily basis and are used primarily for transient occupancy, and for which desk service is provided. In addition, one or more of the following services may be provided: maid, telephone, bellboy, or furnishing of linen. When used in this chapter, the term hotel includes a motel.</p> <p><del>OWNER-OCCUPIED TRANSIENT RENTAL. The unsupervised use of an owner-occupied single-family residential structure to provide furnished accommodations for overnight guests for no more than 30 days in a calendar year in return for compensation which may include barter and exchange.</del></p> <p>ROOMING HOUSE. A building, other than a hotel, where lodging for more than six unrelated persons is provided without meals in return for compensation.</p> <p>1302 INSPECTIONS</p> <p>The code official shall make inspections to determine the condition of boarding houses, hotels, rooming houses, <del>owner-occupied transient rental</del>, and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.</p> <p>1303 LICENSES AND PERMITS REQUIRED</p> <p>No person may operate a boarding house, hotel, rooming house, <del>owner-occupied transient rental</del>, or bed and breakfast establishment unless a license for the operation, in the name of the operator and for the specific dwelling used, has been issued by the code official and is currently valid and in good standing. Unless specifically exempted by the provisions of Chapter 10-3 (Food and Food Handlers) of the City Code, each boarding house and bed and breakfast establishment is required to have a permit as a food service establishment issued by the Health Authority.</p>	<p>Adds OOTR to the existing regulations in Code for hotel, boarding house, rooming house, and bed and breakfast</p> <p>This definition of an OOTR is based on the definition above of a bed and breakfast, but also regulates short-term home exchanges or swaps</p>

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<p><b>1304 LEASING OR RENTING ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE, OWNER-OCCUPIED TRANSIENT RENTAL, OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE</b></p> <p>An owner, manager, or person in control of a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment commits an offense if the owner or person leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter.</p> <p>Each day that an owner, manager, or person in control of the property leases, rents or otherwise induces occupancy of a room in a hotel, boarding house, rooming house, owner-occupied transient rental, or bed and breakfast establishment which does not have a valid license issued and displayed as required by this chapter is a separate occurrence. An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500 per offense, per occurrence, unless proof of a culpable mental state is proven. If proof of a culpable mental state is demonstrated, an offense under this section is punishable by a fine not to exceed \$2000 per occurrence.</p> <p>Operation of an owner-occupied transient rental without a license subjects the occupants of the property to immediate eviction by the police.</p> <p><b>1305 APPLICATION</b></p> <p>An application for a license required by this chapter must be in writing and submitted to the code official.</p> <p><b>1306 FEE</b></p> <p>Each application for a rooming house, hotel, boarding house, owner-occupied transient rental, or bed and breakfast establishment license must be accompanied by the payment of a fee in an amount established by separate ordinance, to be prorated on a quarterly basis.</p> <p><b>1307 ISSUANCE</b></p> <p>A boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment license shall be issued by the code official after the code official determines that the owner or operator has complied with all applicable ordinances and rules. A license shall not be issued by the code official for any applicant or location in the absence of proof of the applicant or location's substantial compliance with all applicable local hotel occupancy tax rules and regulations. A license shall not be issued by the code official for any applicant or an owner-occupied transient rental without written acknowledgement by the applicant of the rental term limits of no more than two separate transient rentals in a calendar year and with a combined duration of no more than 30 days.</p> <p><b>1308 LICENSE SUSPENSION</b></p> <p>Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the boarding house, hotel, rooming house, owner-occupied transient rental, or bed and breakfast establishment license shall be suspended. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, owner-occupied transient rental, or</p>	<p>Eviction clause from Encinitas, CA ordinance Chapter 9.38</p> <p>OOTR license holders are informed of the Hotel Occupancy Tax requirements and rental term limits at the time of issuance</p> <p>This section also handles the case where an OOTR owner exceeds the two rental/combined total 30 day limit per calendar year</p>



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<p>bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended. On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, <u>owner-occupied transient rental</u>, rooming house, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein. The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.</p> <p><b>1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL</b></p> <p>The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:</p> <ol style="list-style-type: none"> <li>1. the denial of an application for a license to operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment;</li> <li>2. the suspension of a license to operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment;</li> <li>3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected.</li> </ol> <p>An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following setting on the scheduled agenda if a quorum is present at the hearing, unless the appellant requests a later date and waives the scheduled hearing.</p> <p><b>1310 EXPIRATION</b></p> <p>Each boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, and bed and breakfast establishment license expires at the end of the calendar year for which it is issued, unless suspended or revoked as provided in this chapter.</p> <p><b>1311 TRANSFER AND NOTICE ON SALE OF PREMISES</b></p> <p>A license issued under this chapter is not transferable. Every person holding a license shall give written notice to the code official no later than 10 days before the conveyance, transfer, or any other disposition of the ownership of, interest in, or control of any boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment. The notice must include the name and address of the person succeeding to the ownership or control of the boarding house, hotel, rooming house, <u>owner-occupied transient rental</u>, or bed and breakfast establishment.</p> <p><b>1312 DISPLAY</b></p> <p>The license required by this chapter must be displayed at all times in a conspicuous place designated by the code official within each boarding house, hotel, rooming house, or bed and breakfast establishment, <u>with the exception of an owner-occupied transient rental where the license required by this chapter shall be displayed for the week before, during, and the week after each transient rental of the property.</u></p>	